

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CIVIL APPLICATION NO. 733 OF 2005
IN
APPEAL FROM ORDER (L) NO.12736 OF 2005

Surjeet Sinmgh Bagga and anr. Applicants.
Vs.
Pritam Singh Bagga and ors. Respondents.

Mr. J. B. Chinoy with Mr. V.R. Dhond with V.N. Kantawala i/by M/s. Karitkeya & Associates for the applicants.

Mr. Navin Parekh with Mr. Sameer Baserkar for the Respondent Nos. 1 to 4.

Mr. B.H. Mehta AGP for the Respondent No.5

**CORAM : R.S.MOHITE, J.
VACATION JUDGE
DATED : 20/5/2005**

P.C.:

1. Heard both sides.

2. It appears to be a family dispute. This A.O. is filed against an order dated 12.5.2005 filed by the City Civil Court in Notice of Motion St. No.2324 of 2005. The plaintiffs and defendants 1 and 2 are close family members. Order has been passed on hearing both the sides. The order passed is an ad interim order and the Notice of Motion kept for further hearing on 29.6.2005. On Perusal of the

order , it appears that the said order was passed on submissions made by the learned Advocates for both the sides looking into the grievance and disputes between the parties. Both the parties are carrying various businesses and they requested that the court may pass an appropriate order and on the basis of such concession made by both the advocates the court after referring to the documents before it on that day has directed that the Shop No.1,2,and 3, Ashiyana Shopping Centre, Seven Bungalows, Andheri (W), Mumbai should be handed over to plaintiff No.4 to run and manage the said business. That the plaintiff No.4 to continue to manage "Legacy of China and Enigma", the Restaurant Urban Tadka and the restaurant Poptates At Andheri. The business M/s. Shilpa Enterprises, M/s. Naunidh Enterprises, M/s. Paridi Finance Limited at King Circle and M/s. United Motors and M/s. Newtek Enterprises both at Dadar are to be run by plaintiff No.3. The defendant Nos. 1 and 2 are permitted to do the business activities in the name and style as Poptates at Malad, Peking Tom at Malad Slice of Lime at Malad, Urban Tadka at Kandivali and Enduing Quest at Kandivali on behalf of the joint family.

3. There are three grievance which are made in the

course of the arguments. These grievances are that first all these properties are not the joint family properties. Secondly the properties which are mentioned in Paragraphs B and C of Para 68 of the order are not managed by the plaintiffs to whom they are allotted and that no concession was made by the Advocate permitting the court to pass an ad interim workable order. In so far as concession not being made by their advocates to permit the court to pass an order, there is no grievance made in the appeal memo about the same. The matter was adjourned from 12.5.2005 to 13.5.2005 by the Trial Court and no grievance was made to the trial court. There is no ground in the appeal memo as well as no averments in the civil application.

4. As regards the properties at Paragraphs B and C, the management and possession of these properties is disputed. The applicants state that they are in possession and the respondents are contesting the same. In the circumstances, Court Receiver is appointed to visit the restaurant " Legacy of Chine and Enigma", Urban Tadka at Andheri(West), Poptates at Andheri. M/s. Shilpa Enterprises, M/s. Naunidh Enterprises, M/s. Paridi Finance Limited all three at King Circle and M/s. United Motors and M/s.

Newtek Enterprises both at Dadar and Poptates at Malad, Peking Tom at Malad, Slice of Lime at Malad, Urban Tadka at Kandivali and Ending Quest at Kandivali and to make a report as to who is managing the said businesses and as to who is in possession of the said business. It is made clear that the court receiver will take possession of Shop Nos. 1,2 and 3 Ashiyana Shopping Centre, Seven Bungalows, Andheri (West) Mumbai 400053 where the business of "River Dale is being run business River Dale and shall appoint plaintiff No.4 as the agent of the court receiver without royalty and security subject to further orders of this court. The Court Receiver will prepare a report and file it in the suit pending in the City Civil Court and further orders will be passed by the Bombay City Civil Court after taking into account the factual possession and management of the properties. It is directed that Notice of Motion may be disposed of as early as possible as it is desirable that the family dispute may be settled urgently. In case of any dispute, parties are at liberty to move the court. As far as business River Dale is concerned, the court receiver to take possession tomorrow and handover the possession to the Plaintiff No.4 forthwith. It is expected that all the parties will maintain peace

and will not interfere with each other's possession.

5. Advocates for all the parties state that the parties are agreeable that the disputes which are the subject matter of the suit may be sent to arbitration and therefore, Justice Kurdukar(if available) or if not available Justice S.K. Desai would be acceptable as sole Arbitrator. Agreement is recorded. Instead of mediation the matter is referred to arbitration as aforesaid. Accordingly Appeal from order stands disposed of.

(R.S. MOHITE, J.)